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7 VINCENT ROBERT MACKEY,
8 Plaintiff,
9 v.
10 DELLA BAKER, et al.,
11 Defendants.

Case No. [22-cv-05105-JSC](#)

**ORDER DENYING MOTION TO
VACATE**

Re: Dkt. No. 30

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13 Plaintiff, a California prisoner proceeding without an attorney, filed this civil rights action
14 under 42 U.S.C. § 1983 against officials at San Quentin State Prison and a Forensic Psychologist
15 with the California Board of Psychology. The Court reviewed the first amended complaint under
16 28 U.S.C. § 1915A, ordered it served upon Defendants Sergeant Baker and Lieutenant Teixeira
17 based upon two cognizable claims, and dismissed the remaining claims. (ECF No. 19.)
18 Thereafter, the Court corrected the service order, dismissed the claims against Defendant Sergeant
19 Baker and ordered service upon Defendant Della Baker instead. (ECF No. 27.) Plaintiff has filed
20 a motion to “vacate” the latter order, which Defendants oppose. Plaintiff has not filed a reply
21 brief.

22 Where the Court’s ruling has not resulted in a final judgment or order, reconsideration of
23 the ruling may be sought under Rule 54(b) of the Federal Rules of Civil Procedure, which
24 provides that any order which does not terminate the action is subject to revision at any time
25 before the entry of judgment. *See Fed. R. Civ. P. 54(b).* “Reconsideration is appropriate if the
26 district court (1) is presented with newly discovered evidence, (2) committed clear error or the
27 initial decision was manifestly unjust, or (3) if there is an intervening change in controlling law.”
28 *School Dist. No. 1J v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993). Plaintiff has not presented

1 newly discovered evidence, shown clear error or manifest injustice, or shown an intervening
2 change in the law. Plaintiff simply asserts that he has made proper claims against both Sergeant
3 Baker and Della Baker. For the reasons explained in the prior orders, his claim against Sergeant
4 Baker for filing a rules violation report (“RVR”) (*see* ECF Nos. 1 at 3; 12 at 3) is not a valid due
5 process claim (ECF Nos. 11 at 3:23-4:4, 4:23; 19 at 2:26-3:9, 4:14-15), whereas his claim against
6 Counselor Della Baker for putting false information in his file (ECF Nos. 1 at 2-3; 12 at 2-3) is a
7 claim that the Court is able to rule upon (ECF Nos. 11 at 3:3-8; 19 at 2:18-21). Plaintiff’s
8 disagreement with the Court’s conclusions, without more, is not sufficient reason to reconsider or
9 vacate the Court’s prior order. Plaintiff asks why the Court had to correct its prior order. As
10 previously explained, the correction was due to the Court’s mistakenly treating Counselor Della
11 Baker and Sergeant Baker as one person. (ECF No. 27 at 2:3-2:6.)

12 Plaintiff’s motion to vacate is therefore DENIED.

13 This order disposes of docket number 30.

14 **IT IS SO ORDERED.**

15 Dated: February 28, 2023

United States District Court
Northern District of California



JACQUELINE SCOTT CORLEY
United States District Judge